IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

MFA.No. 1779 of 1998(D)

OA.16/1982 of FOREST TRIBUNAL, KOZHIKODE
.....

APPELLANT/APPLICANT:

E.SIVADASAN NAIR,
THEVUMKUNI HOUSE,
"SREE RAGAM", P.O.PAYYOLI,
KOZHIKODE. (DIED)

ADDL.APPELLANTS:

2.P.K.VILASINIAMMA, AGED 62 YEARS,
W/O.LATE E.SIVADASAN NAIR,
RESIDING AT SREERAGAM, PANDIRIKKAD ROAD,
P.O.MOODADI, KOILANDI TALUK.

3.P.S.SUDHEESH KUMAR, AGED 42 YEARS,
S/O.LATE E.SIVADASAN NAIR, DO. DO.

4.P.S.MANOJ KUMAR, AGED 37 YEARS,
DO. DO.

5.P.S.VINOD KUMAR, AGED 35 YEARS,
DO. DO.

L.R.S OF THE DECEASED APPELLANT ARE IMPLEADED AS ADDL.APPELLANTS 2 TO 5 AS PER ORDER DATED 22.9.2006 ON I.A.NO.1828/2006.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS/RESPONDENTS:

1.THE STATE OF KERALA, REP. BY THE CHIEF SECRETARY, THIRUVANANTHAPURAM.

2.THE CUSTODIAN OF VESTED FORESTS, OLAVAKKODE, PALAKKAD DISTRICT.

BY SPL. GOVERNMENT PLEADER SRI.M.P.PRAKASH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 08/06/2007 ALONG WITH MFA NO.310 OF 1999 AND MFA NO. 393 OF 1999, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A.1779/1998

ORDER ON C.M.P.NO.7438/1998 IN M.F.A.1779/1998

DISMISSED.

8.6.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.P.BALACHANDRAN, JUDGE

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NOS.1779 OF 1998,
310 & 393 OF 1999 ()

Dated this the 8th day of June, 2007

J U D G M E N T

KOSHY,J.

Appellants in these cases claimed that their land described in the schedule to the application are not vested under Kerala Private Forest (Vesting and Assignment) Act, 1971 (in short 'The Act'). There is no dispute that the area in question was a private forest as it was land covered under Madras Preservation of Private Forest Act, 1949. (See Section 2 (f) 1 (i) of the Act defines Private Forest). Their case is that they are entitled to get the exemption under Sections 3(2) or 3(3) of the Act. Under Section 3(1) all private forests in Kerala are vested in the Government automatically on the appointed day (10.5.1971, unless it is exempted. Section 3(1) reads as follows:

> "**Section 3(1):** Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of sub-sections (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished."

There is no case that at the time when the Act came into force it was cultivated so as to get benefit under Sections 3(2). Then the question is whether they had valid title and they have intention to cultivate the property as on 10.5.1971. Sections 3(2) and 3(3) reads as follows:

> **Section 3(2):** Nothing contained in sub-section (1) shall apply in respect of so much extent of land comprised in private forests held by an owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964) or any building or structure standing thereon or appurtenant thereto.
>
> **Section 3(3):** Nothing contained in sub-section (1) shall apply in respect of so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with other lands held by him to which Chapter III of

> the Kerala Land Reforms Act, 1963, is applicable, does not exceed the extent of the ceiling are applicable to him under Section 82 of the said Act."

All the claimants contended that they were holding the property in view of Ext.P1 certified copy of the final decree. The above judgment and decree would show that in partition suit the applicants got the property and therefore they are the owners of the property. The tribunal correctly accepted the contention that a separate title deed is not necessary. Ext.P1 is sufficient. But according to the tribunal it is not proved by the claimants that the properties mentioned in Ext.P1 is the properties claimed because survey numbers shown are different. However, there was no such case for the respondent State that the property was different. Apart from the above, we note that difference in survey number is due to re-surveys. There were two re-surveys. In the second re-survey the number was again changed. Commissioner also identified the property. Therefore we are of the opinion that property was identified and covered by Ext.P1 valid title to the appellants. For getting entitlement of the benefit under Section 3(3) apart

from title, claimants shall also establish that there was intention to cultivate the properties on the appointed day and burden to prove the same is on the claimants. Mere assertion that there was an intention to cultivate is not enough. There should be something in evidence to show that there was intention to cultivate the property on the appointed day. In this case except one O.A.No.16/1982 other O.A.'s were filed in 1993. O.A.No.16 was filed in 1982. If on the appointed day, there was an intention to cultivate, by expiry of 10 or 20 years at least they should have done something for cultivation. But there was no evidence to show that even after expiry of two decades, applicants did do any act manifesting their intention to cultivate the land. Mere possession of private forest is not enough to show that there was intention to cultivate and all the private forest owned and possessed by many vested in the Government because of the operation of the Act. In this connection we also refer to the Commission report. Commissioner found that though these lands were situated near a road the scheduled land is a dense forest. It was also surrounded by forest. It was full of forest trees and

there was no evidence of any cultivation. Considering the facts and circumstances of the case, we are of the view that the findings of the tribunal that claimants were not able to prove that there was intention to cultivate cannot be interfered with and hence all these appeals are dismissed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NOS.1779 OF 1998,
310 & 393 OF 1999 ()

J U D G M E N T

8th June, 2007